

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)
James Cosmano,) 19-13287
Debtor) Honorable A. Benjamin Goldgar
) Chapter 7
)

NOTICE OF MOTION

TO: - James Cosmano, 450 E. Waterside Dr., Apt. 1301, Chicago, IL 60601
- * Steven Radtke, Chill, Chill & Radtke, PC, 79 W. Monroe St., Suite 1305, Chicago, IL 60603.
- * Patrick Layng, U.S. Trustee, 219 S. Dearborn, Suite 873, Chicago, IL 60604
- Civil Process Clerk, U.S. Attorney's Office, 219 S. Dearborn, 5th Floor, Chicago, IL 60604
- William P. Barr, United States Attorney General, US Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 30530
- Internal Revenue Service, PO Box 7346, Philadelphia, PA 19101
- D. Patrick Mullarkey, Tax Division (DOJ), PO Box 55, Ben Franklin Station, Washington, DC 20044

PLEASE TAKE NOTICE that on June 26, 2019, at 9:30 a.m., the undersigned shall appear before the Honorable A. Benjamin Goldgar, at the Dirksen Federal Courthouse, 219 S. Dearborn, Chicago, IL 60604, in Courtroom 642, and, then and there present the attached **MOTION TO AVOID LIEN**, a copy of which is attached hereto and served upon you herewith.

By: /s/ Justin R. Storer

Justin R. Storer
One of the Debtor's Attorneys
Lakelaw
53 W. Jackson, Suite 1610
Chicago, IL 60604
312.662.5757
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that he caused a copy of this notice and attached MOTION TO AVOID LIEN to be mailed to the above persons, at their respective addresses, first-class postage prepaid, by depositing the same in the U.S. Mail at 53 W. Jackson Street, Chicago, IL, on June 12, 2019. The individuals marked with one asterisk were served via electronic service.

By: /s/ Justin R. Storer

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MOTION TO AVOID LIEN

NOW COMES the Debtor in the above-captioned case, James Cosmano, by and through his attorneys at Lakelaw, to present his MOTION TO AVOID LIEN, and in support thereof, states as follows:

- 1) This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. 1334 and this is a “core proceeding” under 28 U.S.C. 157.
- 2) The Debtor filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on May 8, 2019.
- 3) The Debtor resides at 450 E. Waterside Drive, Unit 1301, Chicago, IL.
 - a. The Cook County, Illinois PIN number of this property is 17-10-400-043-1119.
 - b. Based on an appraisal, that property is worth approximately \$505,000.00.
 - c. The Debtor owes JPMorgan Chase approximately \$500,000.00 in a senior mortgage on this property.
 - d. The property is further encumbered by a tax lien recorded against Mr. Cosmano, personally, pursuant to 26 U.S.C. 6321, 6322, and 6323, recorded on February 19, 2015, and found at Cook County Recorder of Deeds document number 141630215, in the amount of \$5,372,886.99.

- 4) Furthermore, prior to the filing of this bankruptcy case, the United States of America obtained a judgment against the Debtor pursuant to 26 U.S.C. 7401.
- 5) The United States memorialized its judgment at the Cook County Recorder of Deeds, at document number 1825316059, recorded on September 10, 2018, against James Cosmano, in the amount of \$6,051,979.00.
- 6) Pursuant to 735 ILCS 5/12-101, a judgment is a lien on the real estate of the person against whom it is entered in any county in the State, from the time a transcript, certified copy, or memorandum of judgement is filed in the office of the recorder in the county in which the real estate is located.
- 7) Pursuant to 11 U.S.C. 522(f)(1), the Debtor may avoid the fixing of a lien on an interest of the Debtor in property to the extent to which such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of that section, if such lien is-
 - (A), a judicial lien, other than a judicial lien that secures a debt
 - (i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and
 - (ii) to the extent that such debt-
 - (I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and
 - (II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.
 - 8) Under 11 U.S.C. 522(f)(2)(A), a lien shall be considered to impair an exemption to the extent that the sum of that lien, and all other liens on the property, and any hypothetical exemption that the debtor could claim exceed the value of the debtor's interest in the property. (See *In re: Jaffe*, 568 B.R. 292 (Bankr. N.D.Ill. 2017).)

- 9) Accordingly, the Debtor may avoid the United States' judgment lien, referenced in Paragraph 5, *supra*, on his condominium in full, as this lien necessarily impairs the exemption to which he is entitled.
- 10) Avoiding the judgment lien of the United States of America is necessary for the Debtor's fresh start.

WHEREFORE THE DEBTOR, James Cosmano, prays this Court enter an order avoiding the judgment lien of the United States of America, recorded at Cook County Recorder of Deeds document number 1825316059, as to Mr. Cosmano's ownership interest in his residential condominium located at 450 E. Waterside Drive, Unit 1301, Chicago, IL.

Respectfully submitted,

By: /s/ Justin R. Storer

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One of the Debtor's Attorneys
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